FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 115/2007
(*Syed Bismillah Syed Gulam* **VERSUS** *Arvind Vitthalrao Patode***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Chandurkar, Advocate for the appellant.
Shri Patil, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 9th July, 2007.

This Court was not inclined to admit this petition when the matter came up for admission before this Court on 11.04.2007. However, since the appellant was residing in the suit land for almost 45 years, the counsel for the appellant sought the issuance of the notice to the respondent only for the limited purpose to show cause as why the time to vacate the premises and deliver the vacant possession of the suit property should not be extended for a further period of six months.

The District Judge, Amravati had by the impugned judgment dated 11.12.2006 granted time to the appellant to vacate the premises till the end of June-2007.

On the receipt of notice Shri P.S. Patil appears on behalf of the sole respondent and submits that the respondent does not have any serious objection for the extension of time to vacate the premises only till

31.12.2007. The counsel for the respondent, however, submits that the undertaking dated 25.06.2007 filed by the appellant does not merely refer to his vacation of premises but in fact incorporates clause 4 which states that in case the respondent is desirous of selling the suit property, the appellant may be given the first chance of purchasing the same as he is willing to purchase it. According to the counsel for the respondent, such a clause was not necessary in the undertaking and this would give rise to some complications in future.

Shri Chandurkar, the learned counsel for the appellant, however, makes it clear that his client is not seeking any right whatsoever by incorporating clause 4 in the undertaking dated 25.06.2007 and by this clause his client merely wants it to be known to the respondent that in case the respondent intends to sell the property, the appellant is also willing to purchase the same. It is submitted on behalf of the appellant that for the purpose of disposal of this second appeal, clause 4 of the undertaking can be ignored.

In view of the aforesaid position, it is clear that the appellant is not seeking any right whatsoever for purchasing the suit property though he merely brings it to

the notice of the respondent that he is also willing to purchase the same. Clause 3 of the undertaking is the material clause whereby the appellant undertakes to vacate the suit premises on 31.12.2007.

The respondent had filed a suit against the plaintiff/respondent for possession of the suit land. The defendant/appellant had resisted the suit of the plaintiff and had claimed to be the owner of the property by adverse possession. The trial as well as the appellate Court held that the plaintiff had proved their ownership over the suit property by virtue of the sale-deed dated 23.02.1998. The plaintiff further proved that the defendant had encroached upon the suit land in the month of November-1999. The Courts negatived the case of the defendant of acquiring title over the suit property by adverse possession. Consequently, the suit filed by the plaintiff for eviction and possession was decreed.

The findings recorded by both the Courts are pure findings of facts and do not give rise to any substantial question of law.

The second appeal is, therefore, hereby dismissed with no order as to costs.

As discussed herein above, since the appellant

has furnished an undertaking in this Court to the effect that the suit premises would be vacated by the appellant and the possession of the property would be delivered to the plaintiff on 31.12.2007, the appellant is permitted to handover the peaceful possession of the property to the plaintiff on or before 31.12.2007.

JUDGE

APTE